

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF WABASH)
VALLEY POWER ASSOCIATION, INC., FOR) CAUSE NO. 42668
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO ACQUIRE) SUPPLEMENTAL ORDER
AN INTEREST IN CERTAIN EXISTING)
GENERATING FACILITIES AND CONSTRUCTION) APPROVED: DEC 19 2007
OF NEW GENERATING FACILITIES PURSUANT)
TO IND. CODE § 8-1-8.5 ET SEQ.)

BY THE COMMISSION:

Gregory D. Server, Commissioner

William G. Divine, Administrative Law Judge

On June 10, 2004, Wabash Valley Power Association, Inc. ("Petitioner") filed its Petition in this Cause with the Indiana Utility Regulatory Commission ("Commission") requesting, pursuant to IND. CODE §8-1-8.5, a Certificate of Public Convenience and Necessity ("CPCN") to acquire up to 25 MW of additional base load landfill gas ("LFG") generating facilities. On September 29, 2004, the Commission issued Petitioner a CPCN to acquire and/or construct 25 MW of additional LFG base load generating facilities. The Commission Order approving the issuance of this CPCN provides that the CPCN will expire on December 31, 2007.

On September 25, 2007, Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") filed a Joint Request to Open Cause No. 42668 in order to extend Petitioner's CPCN which is set to expire on December 31, 2007, for 5 MW of generation which is not under construction or planned for at this time. On this same date, Petitioner and the OUCC filed a Joint Stipulation and Settlement Agreement asking for continuation of the CPCN for up to 5 MW of additional landfill generation for an initial period of three (3) years. This Cause was reopened by Docket Entry on October 29, 2007. Pursuant to a pre-hearing conference held on November 19, 2007, an evidentiary hearing was held in this Cause on December 13, 2007, in Judicial Court Room 224 of the National City Center, Indianapolis, Indiana, at which Petitioner and the OUCC jointly offered their Joint Stipulation and Settlement Agreement. Petitioner presented testimony and exhibits sponsored by Damon Darin Daniels, Operations Engineer for Power Production. The OUCC did not present any testimony.

The Commission, having examined the evidence in this Cause and being sufficiently advised, now finds as follows:

1. **Notice and Jurisdiction.** Notice of this proceeding was duly given and published more than ten days prior to December 13, 2007, in a newspaper of general circulation, published in the English language in Marion County, Indiana. Petitioner is a public utility within the

meaning of that term as defined by IND. CODE § 8-1-8.5-1. IND. CODE § 8-1-8.5-2 requires a public utility to obtain a CPCN from the Commission before beginning the construction, purchase or lease of any facility for the generation of electricity. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics and Business.** Petitioner is a generation and transmission electric utility and wholesale supplier of electricity and is a mutual benefit corporation organized under the Indiana Non-Profit Corporations Act. Petitioner's principal place of business is located at 722 N. High School Road, Indianapolis, Indiana 46214. Petitioner provides all the electric power and energy requirements for twenty-eight of its member systems, all of which are electric utilities delivering service to retail customers, and they include twenty-two rural electric membership corporations ("REMCs") organized under Indiana's Rural Electric Membership Corporation Act, one electric cooperative formed under the laws of Ohio, one electric cooperative formed under the laws of Michigan, three electric cooperatives formed under the laws of Illinois, and one electric cooperative formed under the laws of Missouri.

3. **Relief Requested.** In its 2004 CPCN Petition in this Cause, Petitioner requested to expand its existing LFG-based generation capabilities. At that time Petitioner owned two operational 3.2 MW LFG generating facilities located at Twin Bridges Landfill (CPCN issued in Cause No. 41955) and at Waste Management of Indiana's ("WMI") Oak Ridge RDF facility in Cass County (CPCN issued in Cause No. 42321). The CPCN issued in Cause No. 42321 also approved the construction of a LFG generating facility at WMI's Jay County Landfill which was subsequently constructed. In its 2004 Petition, Petitioner requested a CPCN allowing Petitioner to purchase or construct up to 25 additional MWs of electric generating facilities. Specifically, Petitioner requested a CPCN for:

- (a) immediate construction of a new LFG generation facility with a capacity of up to 3.2 MW at Liberty Landfill in White County, Indiana, operated by WMI;
- (b) immediate purchase from WMI of three existing LFG generating facilities, each with a 3 MW generating capacity, that are located at WMI's landfills in Prairie View Landfill in St. Joseph County, Deercroft Landfill in LaPorte County, and Twin Bridges No. I Landfill in Hendricks County; and
- (c) future construction of up to 13 MW of new LFG generating facilities, with capacities of approximately 3.2 MW each, at these or other landfills.

Following the CPCN issued by the Commission, in February 2005 Petitioner commenced construction of LFG generating facilities at Liberty Landfill in White County, Indiana. On August 2, 2005, the Liberty Landfill site went online, providing approximately 3.2 MWs. Also, on March 30, 2005, Petitioner purchased existing online landfill generation facilities from WMI and Prairie View Landfill in St. Joseph County, Indiana, Deercroft Landfill in LaPorte County, Indiana, and Twin Bridges I Landfill in Hendricks County, Indiana. Each of these generating stations consists of four Caterpillar 3516 engine-generators with a collective output of the Caterpillar units of approximately 3.2 MW per site. In August 2006, pursuant to the CPCN, Petitioner purchased an existing LFG generation station from WMI in Lake County, Indiana.

The station consisted of one Caterpillar 3516 engine-generator with a collective output of the Caterpillar unit of approximately .8 MW. Pursuant to the CPCN issued in this Cause, Petitioner began construction, in November 2006, of LFG generation station Prairie View II in St. Joseph County, Indiana. Also, in March 2007 Petitioner began construction of the landfill generation station Deercroft II in LaPorte County, Indiana. Prairie View II came online in August 2007 adding approximately 3.2 MW and Deercroft II came online in September 2007, adding approximately 3.2 MW.

Petitioner has constructed and/or purchased approximately 20 MW of additional LFG-based generating facilities pursuant to the 25 MW CPCN issued by the Commission. Petitioner would like an extension to contract and/or purchase the remaining 5 MW for which the issued CPCN is set to expire. Mr. Daniels described that Petitioner is in negotiations to either acquire further LFG generating projects or further construction projects and has created a purchase order for additional Caterpillar 3516 engines for future use. The extension of the CPCN requested by Petitioner grants it flexibility to acquire or construct additional facilities that are small in relationship to the base load needs of Petitioner and Indiana, but incrementally needed to ensure the capacity to serve Petitioner's members' forecasted growth in demand.

4. **Considerations Required in IND. CODE §8-1-8.5-4.** IND. CODE § 8-1-8.5-4 provides that in acting upon a CPCN petition, the Commission shall take into account the petitioning public utility's current and potential arrangements with other electric utilities for the interchange of power, the pooling of facilities, the purchase of power, and the joint ownership of facilities. In addition, the Commission must take into account other methods for providing reliable, efficient, and economical electric service, including the refurbishing of existing facilities, conservation, load management, co-generation and renewable energy sources. The Commission has previously found that Petitioner has adequately addressed these issues for 25 MW of LFG generation. Nonetheless, Petitioner's evidence addresses these issues as follows:

A. **Petitioner's Existing Resources.** Petitioner's witness, Mr. Daniels, presented testimony and exhibits with regard to baseload generation that Petitioner presently owns: (1) a 25% interest in Gibson Station Unit No. 5, which accounts for approximately 156 MW of its power resource requirements, and (2) an interest in eight (8) LFG generating facilities with a nominal capacity of 23 MW. Petitioner also owns a 50% interest in the Wabash River Energy Synthetic Gas Plant located in West Terre Haute, Indiana, which now operates under the name of SG Solutions, LLC. Petitioner purchases all the synthetic gas produced by the Plant and pursuant to a tolling agreement with Duke Energy, the synthetic gas is converted to electricity pursuant to a fee arrangement. This arrangement has a nameplate rating of 281 MW and is operated as a base load unit. Petitioner is in the process of purchasing from Duke Energy the combined cycle generating unit (Wabash River Unit No. 1).

B. **Need for Additional Resources.** Petitioner's witness, Mr. Daniels, testified that Petitioner has an obligation to supply all the power requirements of its twenty-eight members, twenty-two of which are located in Indiana. Petitioner has entered into individual contracts with twenty-eight of its members to serve their full electric, power and energy requirements through the year 2027. Mr. Daniels introduced as Exhibit DDD-1, a copy of Power and Resources filed with Petitioner's 2005 Integrated Resource Plan ("IRP") and an updated

version of Petitioner's Forecast of Power Supply Requirements was attached as Exhibit DDD-2. Mr. Daniels also testified that the Petitioner has ongoing needs for additional resources due, in part, to stronger growth from additional industrial sales particularly related to an increase in ethanol plants located in Petitioner's service area. The 5 MW supplied by the LFG facilities will contribute to Petitioner's overall generation expansion requirements.

C. Analysis of Alternatives. R. Alan McKee, formerly Petitioner's System Planning Principal, testified in the initial Petition in this Cause that several alternatives were considered for providing reliable, efficient, and economical electric service to its members. An exhibit to Mr. McKee's testimony showed a summary of proposals received as a result of requests for proposals from Petitioner. His analysis and comparison of these proposals to the proposed construction and purchase of additional LFG generating facilities supported that the proposed LFG generating facilities for which a CPCN was requested had a cost that was competitive with the costs of other base load alternatives. He further testified that the proposed landfill gas generating facilities were consistent with Petitioner's IRP and Petitioner's plan and strategy to look for opportunities for alliances and partnerships, including participation in new power production facilities. He also testified that the proposed additional landfill gas fired units had a competitive cost compared to other expansion baseload resources evaluated in connection with Petitioner's IRP on file with the Commission, and that Petitioner had experience with the construction and operating costs for the proposed LFG generating facilities.

Mr. Daniels' testimony added that the LFG projects provide value to Petitioner's members in multiple ways: through low cost generation; building member equity in smaller increments; renewable energy resource; diverse fuel methods; increased load distribution reliability; green power for members through its EnviroWatts program (a program developed by Petitioner to provide its members and their retail customers with an energy source whereby they can receive their electricity through a renewable energy source such as landfill or wind generation); and utilizes waste fuel product that would otherwise flare into the atmosphere.

5. Joint Stipulation and Settlement Agreement. The parties' September 25, 2007 agreement contains the following elements:

(a) The parties jointly request an extension of the CPCN such that the CPCN will expire three years from the date of the extension of the CPCN unless the Commission is notified in writing by the parties that they have agreed to renew the CPCN for an additional three years.

(b) The parties agree that in no case shall a CPCN extend beyond six years from the date an extension is issued.

(c) Pursuant to the original CPCN, Petitioner will submit written notification to the Commission's Electricity Division within thirty days after it begins, and also after it completes, construction of any unit pursuant to the CPCN. The same notice will also be provided to the OUCC.

6. **Commission Findings and Analysis.** IND. CODE §8-1-8.5-5 sets forth specific findings the Commission must make in order to approve and grant a requested CPCN. First, the Commission must make a finding, based on the evidence of the record, as to the best estimate of construction costs. Second, the Commission must find that either (a) construction will be consistent with the Commission's plan, if any, for the expansion of electric generation facility, or (b) the proposed construction is consistent with that utility-specific proposal as to the future needs of consumers in the State of Indiana or in the petitioning public utility's service area. Third, the Commission must find that the public convenience and necessity will require the facilities for which the CPCN is requested. Also, but only if the facility for which the CPCN is requested is a coal-consuming facility, the Commission must find that the facility uses Indiana coal or the use of non-Indiana coal is justified by economic considerations or governmental regulations. The Commission has previously made specific findings set forth in IND. CODE § 8-1-8.5-5 in issuing Petitioner the CPCN for 25 MW of LFG generation.

A. **Cost Estimate.** In issuing the CPCN on September 29, 2004, the Commission found on the basis of the testimony of M. Keith Thompson, Petitioner's Manager of Power Systems Operations at that time (now Vice President of Power Production), and the testimony of Robert M. Endris, Assistant Director of the OUCC's Electric Division at that time, that based upon the evidence of record, the Petitioner's estimate of the purchase and construction costs for the proposed LFG generation facilities were the best estimates of reasonable purchase and construction cost estimations. The Commission continues to find that based upon the evidence of record, that Petitioner's estimates of the purchase and construction costs for the proposed LFG generation facilities are the best estimates and reasonable purchase and construction cost estimations.

B. **Consistency of Landfill Generation Facilities With Petitioner's IRP.** In issuing the CPCN on September 29, 2004, the Commission found that the evidence of record supported that Petitioner's proposed purchase, construction, and ownership of an additional 25 MW of LFG generation facilities was consistent with its IRP submitted pursuant to IND. CODE § 8-1-8.5-3(e) as was modified in part by Petitioner's testimony and exhibits. The Commission continues to find from the evidence of record that the extension for Petitioner to purchase and/or construct the remaining 5 MW from the CPCN issued for 25 MW of LFG generation facilities continues to be consistent with Petitioner's IRP submitted pursuant to IND. CODE § 8-1-8.5-3(e).

C. **Public Convenience and Necessity.** In issuing the CPCN on September 29, 2004, the Commission found that public convenience and necessity require the facilities for which the CPCN of 25 MW was requested. Based on the evidence submitted in this Cause, the Commission again finds that Petitioner has taken into account its current and potential arrangements with other electric utilities for the interchange of power, pooling of facilities, and purchase of power, and has also taken into account other methods for providing reliable, efficient and economic electric service, including the construction of new facilities, conservation, load management, co-generation, and renewable energy sources. The record evidence demonstrates Petitioner has considered options available to it to meet the increasing demand for electricity and the need for reliable energy and has reasonably determined that a reliable, efficient and economic means in meeting these needs includes purchase, construction and ownership of an additional 5

MW of landfill methane gas-based generation facilities which is the remaining 5 MW of the CPCN issued for 25 MW by the Commission.

The Commission notes that under the CPCN it issued September 29, 2004, Petitioner is required to submit a written notification to the Commission's Electricity Division within thirty (30) days after it begins, and also after it completes, construction of any unit approved under the CPCN. Pursuant to the Joint Stipulation and Settlement Agreement, Petitioner also agreed to provide the same notice to the OUCC. We find that written notification upon starting and finishing construction of each unit to be appropriate. However, we find that the Commission can more efficiently track the written notification if it is submitted to the Commission as a filing under this Cause Number, instead of being submitted to the Electricity Division. By filing a notification pursuant to the Commission's procedural rules at 170 IAC 1-1.1, a copy of the notification should also be served on the OUCC.

We also find that the parties' agreement to a renewable three-year CPCN is reasonable. The spirit of the arrangement appears to be a reasonable compromise that fairly balances the OUCC's interest in ongoing review and finite termination dates, and the Petitioner's desire to facilitate future construction and minimize expense. We also find that this should not be open-ended and we find it reasonable that, as the parties agreed, in no case shall the CPCN extend beyond six years from the date the extension is issued.

The Commission commends Petitioner for its continued development and use of landfill methane gas from solid waste disposal facilities as a means of generating electricity. The Commission recognizes that the use of this alternative fuel source conserves valuable natural resources and provides a useful option to the traditional venting and flaring of methane gas into the atmosphere.

7. **Approval and Precedential Effect of Settlement Agreement.** Consistent with the above findings, we find that the parties' Joint Stipulation and Settlement Agreement should be approved. With regard to future citation of the Settlement Agreement, we find that our approval herein should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (*Ind. Util. Reg. Comm'n*, March 19, 1997).

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The parties' Joint Stipulation and Settlement Agreement is approved.
2. The Petitioner is hereby issued an extension of its Certificate of Public Convenience and Necessity to purchase and construct 5 MW of additional landfill gas base load generating facilities.
3. This extension of the Certificate of Public Convenience and Necessity to purchase or construct new landfill gas-based generating facilities shall expire three (3) years from the date of this Order, unless the Commission is notified in writing by the parties that they have agreed to renew the Certificate of Public Convenience and Necessity for an additional three (3) years. In

no case shall the Certificate of Public Convenience and Necessity in this Cause extend beyond six (6) years from the date of this Order.

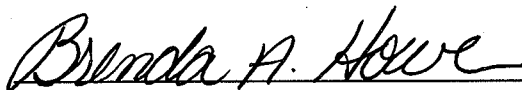
4. Consistent with the findings above, Petitioner shall file written notification with the Commission within thirty (30) days after it begins, and also after it completes, the construction of any landfill gas generating facility approved in this Order. Petitioner shall serve the OUCC with a copy of any written notification filed with the Commission.

5. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, SERVER, AND ZIEGNER CONCUR; LANDIS ABSENT:

APPROVED: DEC 19 2007

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

A handwritten signature in cursive script, reading "Brenda A. Howe", is written over a horizontal line.

**Brenda A. Howe
Secretary to the Commission**